SUPREME COURT, U. S.
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Supreme Court of the United States

October Term, 1967

No. 48,184

PHIL A. ST. AMANT

Petitioner,

versus

HERMAN A. THOMPSON

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MOSES C. SCHARFF
Whitney Bank Building
New Orleans, Louisiana 70112

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel

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TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Phil A. St. Amant, with respect shows unto the Honorable Court as follows:

1.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW.

The opinion rendered by the Court below is reported in 250 La. 405, 196 So.ed 255; and 184 So.2d 314 (La. App. 1st Cir., 1966).

2.

GROUNDS FOR THE COURT'S JURISDICTION

The decree sought to be reviewed was rendered and entered on February 20, 1967, with a refusal of rehearing on March 27, 1967. By motion granted on June 26, 1967, the time for filing this petition was extended to and including August 19, 1967. The jurisdiction of this Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States, 29 USCA 1257 (3).

3.

QUESTIONS PRESENTED FOR REVIEW

Were certain statements by Petitioner, Phil A. St. Amant, concerning a public official and communicated over a television program made with *actual malice,* i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this public official in a civil action for libel and slander?

4.

CONSTITUTIONAL PROVISIONS INVOLVED

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

MAY IT PLEASE THE COURT:

5.

STATEMENT OF THE CASE

This matter involves a suit for damages by Captain Herman A. Thompson, a deputy sheriff of the Parish of East Baton Rouge, State of Louisiana, against Phil A. St. Amant, who at the time the alleged incident occurred, was a qualified candidate for United States Senator from the State of Louisiana. During his political campaign, petitioner appeared on a Baton Rouge television station and made remarks about the respondent. Copies of petitioner's statement were also made available to the press who publicized them. Thompson alleged in his original petition that these remarks were false, slanderous, libelous and malicious (Record P. 16); that they were intended to belittle, degrade and ridicule respondent Thompson and defame, slander and libel his good name, reputation and character before his friends and the general public. (Record P. 17). Petitioner St. Amant, in his answer, admitted the statements, but claimed that they were

not slanderous and were not made with malice (Record P. 19). In the alternative, St. Amant pleaded the absolute defense of truth of these statements. (Record P. 22). Judgment was rendered in the District Court of the State of Louisiana for Thompson in the sum of five thousand and no/100 ($5,000.00) dollars on May 13, 1964.

The Louisiana Court of Appeals, First Circuit, reversed the trial court's decision and held for the petitioner herein, St. Amant, dismissing his suit. Writs of certiorari and review were applied to and granted by the Supreme Court of Louisiana. On February 20, 1967, the Louisiana Court of Appeal was reversed and the judgment of the trial court was reinstated. Rehearing was denied by the Supreme Court of Louisiana on March 27, 1967 and petitioner, the appellant-defendant, petitions to this Court for a writ of certiorari.

The sole question presented in this request for a writ of certiorari was whether the remarks admittedly made by St. Amant were made with actual malice, i.e., they were made with knowledge of falsity or in reckless disregard of whether they were true or false. The constitutional safeguards of freedom of speech were offered as a defense in light of the recent decision, *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 C.Ct. 710, 11 L.Ed. 2d 686 (1964) (Record P. 37). The trial court refused a new trial, stating that the respondent Thompson was a public official and the rule of actual malice applied to him (Record P. 38). However, in passing on the question, the trial court found actual malice in the statements of petitioner St. Amant

and held him liable (Record P. 39). The Court of Appeal, First Circuit, reversed the trial court, finding that the respondent, Thompson, was a public official (Record P. 49), and the actual malice rule of the *New York Times* case *supra* applies.

Thus the constitutional guarantees of freedom of speech were secured when a public official is criticized in the performance of his office (Record P. 50 and Record P. 52).

The Supreme Court of Louisiana rendered a decision reversing the Louisiana Court of Appeal, First Circuit, and reinstating the trial court on the grounds that the constitutional safeguards of free speech are preserved in a civil action by a public official against his alleged slanderer (Opinion of Supreme Court, P. 9). Applying the New York Times rule, the Louisiana Supreme Court found the actual malice necessary to form the basis of such a suit, and concluded that the First and Fourteenth Amendments do not provide protection in this case (Opinion of the Louisiana Supreme Court P. 14).

ARGUMENT

Since at all levels the courts of Louisiana have concluded that Respondent, Thompson, was a public official, the case falls under the aegis of the New York Times rule of libel. The only disputed fact, and the reason certiorari should be granted, is that these statements made by petitioner were uttered with ac-

tual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously, and therefore under the public official rule of the *Times* case, the First and Fourteenth Amendments do guarantee the protection and privilege of free speech.

The question can be resolved only by a close examination of the record. Is there actual malice presented or did the Court wrongfully imply it. The statements referred to were in the form of an affidavit executed by one Albin, a local union member, and read by petitioner St. Amant over television. The pertinent parts of the statement are as follows:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson * * * from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police (Opinion of the Louisiana Supreme Court P. 3)."

The facts presented therein were substantially true. Thompson admitted he had been a frequent visitor to

the Union Hall and was a close friend of the labor leader Partin (T.T. P. 61). He did receive certain monies from Partin for various causes (T.T. P. 63), but insisted they were all checks, not cash (T.T. P. 68). He even admitted that the payments, for whatever reason given, were tendered in envelopes, and that he never opened them but brought them in and gave them to the Sheriff's secretary. (T. T. P. 71). Thompson even testified that Partin attempted to give him certain rewards for solving cases around the Union Hall (T. T. P. 66-67), which offer was rejected.

Thus, from the statement that, "We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman" (Opinion of Louisiana Supreme Court P. 3), we can conclude from the facts in the testimony that this is a true statement. Monies did change hands, and the distinction made by the Louisiana Supreme Court as to whether it was cash or checks (Opinion of Supreme Court P. 6) seems to be of no relevance. The affidavit merely said money changed hands, and checks are money. The Louisiana Supreme Court counted heavily on Respondent Thompson's testimony, an interested party, and ignored and discounted the testimony of Mrs. Marjorie Ann Smith, a Teamster's secretary and an uninterested party, who stated that she had seen cash pass between Partin and Thompson. (Opinion of Sup. Ct. P. 6-7). There seems to be no reason to disbelieve her testimony. The Supreme Court based this decision on the fact that petitioner St. Amant did not have corroborating testimony from the other secretary who supposedly saw the transfer, one Jeanette Fletcher. (Sup.

Ct. Opinion P. 12). But there seems to be no legal duty on St. Amant to have an abundance of witnesses testifying to the same thing. The situation reduces itself to Thompson saying he received no cash and Mrs. Smith saying he did. Thompson called no one to support his story. He might have called his friend, Partin, but he did not. And yet the Court used this as a basis for dismissing Mrs. Smith's testimony as being untrue. The Court of Appeal and the trial court did not doubt her veracity.

However, the undisputed fact that some type of money did change hands still remains, and in this sense, Albin's affidavit is correct. And so was petitioner's reading on television. As for what purposes this money changed hands is a matter of individual opinions. Albin expresses the opinion that this money that changed hands was union money and that Partin withdrew it for his own use. He also offered that because of Partin's connection with some State Trooper (he mentioned someone else, not Thompson), there would be no assistance from State Police in investigating of union officer activities. Albin concluded that since Partin and Thompson were close friends, no help could be expected from the Sheriff's office, but is must be remembered these are deductions and opinions of Albin, not statements of fact. The only actual truthful fact was the money changing hands. The rest were Albin's own personal deductions and conclusions therefrom. If Albin was incorrect in his deductions and opinions, this, under the *New York Times Co. v. Sullivan* rule, would not have warranted recovery even as to Albin, less St. Amant, since the First Amendment's

free speech, as applied to the States by the Fourteenth, limits a jurisdiction's power to award damages for civil libels in matters involving public officials. Recovery can only be had where the injured official proves actual malice, i.e., the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true. Libel recovery under the *New York Times* rule is authorized by publice officials for defamatory remarks when the remarks are known to be false. But the free expression of opinion by its very nature is believed to be true by the expressor. One can be held libel for wanton disregard for truth, but not for mistaken opinion. The fact that money changed hands being true, the circumstance under which it did change hands, and Albin's implying that the money was for a payoff would not give legal ground for holding the statement actionable. This was opinion and comment, no matter how erroneous, based on fact, and to hold such comment libelous is to deny, according to the *New York Times* case, the constitutional right of free speech. By holding as they did, the Louisiana Supreme Court did indeed do just that.

The analysis applies to Albin, the author of the statement. But St. Amant was the party sued. However, there is no evidence that St. Amant was actuated by malice toward Thompson. He secured a sworn affidavit from a union member about activities which in the opinion of this member; Albin, were shady, to say the least. No proof was shown that petitioner St. Amant knew that any fact stated in the affidavit was false

or that any conclusion drawn from these facts were false.

The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion P. 12). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit. And since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case.

In *New York Times Co. v. Sullivan,* a qualified privilege is lifted and liability attaches. Erroneous statements, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability. And yet in this case, the Louisiana Supreme Court places a greater burden on the petitioner St. Amant, and *implies* actual malice since he did not satisfactorily check the source of the statement. St. Amant testified that he gave no thought to Thompson when he made his statement (TT P. 126). He read a sworn statement of a third party. The Louisiana Supreme Court interpreted this as being a reckless error needed to impute liability.

It is submitted that at worst for petitioner herein, these were erroneous statements honestly made, and that knowledge of falsity and ignorance of falsity cannot be held to be one and the same.

There is no law or imposed legal duty to check, further than did petitioner, such a statement to avoid malice or recklessness. Failure to check a source may perhaps be considered negligent, but negligence and malice are not synonymous, just as a negligent homicide and murder requiring malice aforethought are not the same.

WHEREFORE, petitioner respectfully prays that this petition be granted and that a writ of certiorari issue, directed to the Supreme Court for the State of Louisiana, commanding that Court to certify and send to this Honorable Court, for its review and determination, a full and complete transcript and record of all proceedings on the cause entitled "Herman A. Thompson versus Phil A. St. Amant" and reverse title, bearing Number 48,184 on the Docket of the Supreme Court for the State of Louisiana, to the end that the judgment and opinion of said Court may be reversed by this Honorable Court and the judgment of the Court of Appeal, First Circuit of the State of Louisiana reinstated herein;

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

Moses C. Scharff
Whitney Bank Building
New Orleans, Louisiana 70112

Russell J. Schonekas
Gibson Tucker, Jr.,
Of Counsel

CERTIFICATE

I, the undersigned, of counsel for petitioner, hereby certify that I have served a copy of the foregoing petition upon Robert L. Kleinpeter, Attorney for respondent, at P. O. Box 2828, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid, to him at said address.

Attorney for Petitioner

APPENDIX A

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION "B"
PHIL A. ST. AMANT	*	JUDGMENT

This cause came up for hearing on Tuesday, May 5, 1964 pursuant to regular assignment. PRESENT: Robert L. Kleinpeter, of the firm of Kantrow, Spaht & Kleinpeter, Attorneys for the plaintiff; and, Mr. R. G. Van Buskirk, Attorney for the defendant.

When after reading the pleadings, hearing the evidence, considering the memorandums and authorities submitted by counsel, together with oral argument, and for oral reasons assigned, the law and evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Herman A. Thompson, and against the defendant, Phil A. St. Amant, in the full and true sum of Five Thousand and No/100 ($5,000.00) Dollars, together with interest thereon at the legal rate from date of judicial demand until paid and all cost of Court.

JUDGMENT RENDERED in Open Court on the 5th day of May, 1964.

JUDGMENT READ AND SIGNED in Open Court on the 13th day of May, 1964.

(Signed) Fred A. Blanche, Jr.
JUDGE,
Nineteenth Judicial
District Court

Filed May 13, 1964

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION 'B"
PHIL A. ST. AMANT		

REASONS FOR JUDGMENT

The law with reference to libel and slander is that any publication, whether in writing, on television, radio, or in pictures or otherwise, which exposes any person to hatred, contempt, ridicule or which causes him to be shunned or which has a tendency to injure him in his reputation or occupation is a libelous statement. That has been our law and was recently stated in the case of *Miller, Smith & Champagne, et al v. Capital City Press,* 142 So. 2d 462, but that is a hornbook law definition of libel and slander. The foundation of the law of libel and slander is the protection of a person's

reputation, and as stated in *Kennedy v. Item Co.*, 213 La. 347, 34 So. 2d 886, the right to a good name and fame is absolute and is as essential to the pursuit of happiness as is the right to life, liberty and property.

The test of whether a statement is libelous is set forth in *Madison v. Bolton*, 234 La. 97, 102 So. 2d 433, that the test of a libelous article is the effect the article is fairly calculated to produce, the impression it would naturally engender in the minds of the average persons among whom it is intended to circulate. As has been pointed out here, some statements are privileged when they involve public officials, and I believe the law stated by Mr. Van Buskirk with regard to its application to public officials was correct. Public officials are fair game, so to speak, but statements with regard to them are only actionable as being libelous when it can be shown that the maker of such a statement acted with malice, and that must be particularly alleged and proved.

The case of *Smith v. Lyons*, 142 La. 975, 77 So. 896, with regard to the question of damages, and others there cited, are to the effect that when one falsely accuses any person of being dishonest, a liar, being fraudulent, or of having unworthy motives, or to impute the same by insinuations or innuendo, such action renders the individual publishing the same responsible for the consequences. In such instances the law implies malice and will award substantial damages without the showing of any special damages. Of course, a defense to any such libelous statement would be the truth. It is not libelous to make statements about an-

other person or accuse him of being dishonest or accuse him of having unworthy motives which reflect on his character if they are true, but the one who makes such statements also has the burden of proving the truthfulness of the same.

I have gone over the statement again, the statement made by Mr. J. D. Albin in his affidavit and repeated by Mr. St. Amant in his speech on WAFB-TV as follows: "We knew something had to be done if we were to ever straighten out the local union, and the onliest way to straighten it out was the removal of E. G. Partin." Prior to this statement, many statements had been made in the speech with reference to Mr. Ed Partin, business agent of the Teamsters Union, accusing him of such things as trafficking with the Castros in Cuba, being a criminal, in fact, referring to his rap sheet and criminal convictions, and also Mr. St. Amant in his speech and through Albin's affidavit painted Partin as abusive of these particular members in the union, abusive of the membership in the union, mishandling union funds, committing murder, and possibly other dishonest motives and acts which escape my memory. However, considering the whole tenor of the speech, I got the idea that Mr. Partin was a crook of the highest order. Following these remarks quoted by Mr. St. Amant, Mr. Albin stated that certain efforts were made by them to get help or relief from Mr. Partin, and they had gone to Washington to ask James Hoffa to aid them, and as a result of their efforts Mr. Partin had good reason to expect that an investigation of the union was imminent. The affidavit further reflects that they had received knowledge that Mr. Partin was

going to remove the safe from the union hall, and as a person of average intelligence, I would draw the inference that Mr. Partin would only do this in order to hide any wrongdoing on his part with regard to his handling of union funds or otherwise; and he therefore had to get rid of the safe. The affidavit goes on to show how they had thought about what action they could take to prevent this, and it occurred to them that perhaps they should call the law, but that they were afraid to call the law, especially the Sheriff's office, because they knew of Captain Thompson's connections with Ed Partin, that they had known that money had passed hands, and the inference that I got was that this statement tended to impute some dishonest motive to Captain Thompson such as taking a payoff from Ed Partin. It also insinuated and inferred that he, Thompson, rather than do his duty and enforce the law or help them prevent the commission of a crime might aid and abet the wrongdoer Mr. Ed Partin since Partin had connections with Thompson. The statement did not infer, it charged that they should not go to him because if they did they would not get any help and did not know how far he was involved in the Sheriff's office or State Police office. There is no doubt in my mind that a person of average intelligence hearing that speech would figure that Captain Herman Thompson was in cahoots with Ed Partin, especially after all of these other dishonest motives and accusations made as to Mr. Ed Partin just previously thereto and then linking Mr. Thompson's name in the fashion stated. It couldn't help but imply to the average person that Captain Thompson was involved with Partin in a dishonest way.

I heard from Mr. St. Amant today that he intended no malice toward Captain Thompson. He was in a political fight with Senator Russell Long, that it was true that money had passed between Ed Partin and Captain Thompson, and that he had also been out at the Union Hall, and that Partin and Thompson addressed each other by their first names. All of this was also admitted by the plaintiff. Plaintiff has stated that he had plenty of business at the Union Hall, but the same was in connection with burglaries or union activities involving strikes which made it necessary for him to confer with Mr. Partin from time to time. Mrs. Smith, Mr. Partin's secretary, stated that money was left in an envelope from Mr. Partin to Mr. Thompson and that he picked up the same. The Sheriff testified and so did Mr. Thompson that any money that he received from Mr. Partin was purely in connection with drives put on by some charitable institution such as the Baseball Clinic, Elks Club or other charitable drives, and that any money that he ever received from him was solely for that purpose and was turned over to the Sheriff's receptionist who would account for the same.

Even though Mr. St. Amant states that he did not intend to impute any dishonest motives to Mr. Thompson and did not intend to injure or hurt him in his reputation, nevertheless, the fair inference to be drawn by what was stated to the average person had that exact effect.

Having already held that the statement itself inferred and attributed to Mr. Thompson dishonesty, such statements are under our law injurious per se

unless the truth of the accusation is proved. The only proof that this Court has is the fact that the money did pass, which was freely admitted by the plaintiff, and that is not sufficient evidence to attach any dishonest motive to Captain Thompson in view of the other testimony by him and as well as possibly the admissions of the defendant himself that he intended to attribute no dishonest motive to him; but nevertheless, that mere fact of receiving that money is not proof of dishonesty on his part. It is not proof of his taking a payoff, nor proof that because of his connections with Partin he would not do his duty as a law officer. Proof of those charges, which are implicit in the language of the statement, would be his only defense under our law.

I know of nothing more important to a police officer, or for that matter to any man, than his reputation. I know it is more important than money. The natural experiences of life teaches that regardless of a man's wealth, it never takes the place of his good reputation and character. It is especially so of police officers, for there is nothing as vile to our system of justice as the belief that our police are dishonest. They are to enforce the law, and their professional reputation depends a great deal on their honesty and integrity. Of course, it is hard to show how far such a statement has injured Captain Thompson. Captain Thompson, as far as the Court knows and from listening to the Sheriff and others, has a fine reputation, but the statement was circulated all over the parish to many, many persons who have no knowledge of Captain Thompson, and as Shakespeare said, "The bad that men do lives after them and the good is oft interred with their bones." The

public will often not remember good things about people but remembers the bad things that have been said about them, and it is not unreasonable to assume that if Captain Thompson's name is discussed among the general public that it could be associated with taking some payoff from Ed Partin, the Teamsters' agent, and that these union members were afraid to go to the police because they know of Ed Partin's and Captain Thompson's connection. They will remember that long after they have forgotten how much education he has as a law officer, long after they have forgotten that he was a graduate of the F. B. I. School. Long after his many faithful years of service in the Sheriff's office, they will remember that.

It is my opinion that to have made a speech outlining in detail and charging Ed Partin with such great criminal activity and then to link Partin and Captain Thompson together with a statement that money had passed hands between them is a statement which is libelous per se. I was interested in Mr. Van Buskirk's remarks that they were not and the reasons why they were not, but I wonder, Mr. Van Buskirk, what you would think if someone would reflect on your honesty as a lawyer in such a publication. You could have been a good lawyer, which you are, for years, and yet you would be put up to public ridicule and contempt, and damage would result not only to your reputation but indeed to your business, and if the same were not true and if the defendant could not prove it is true, I know that you should feel that you were damaged.

I was looking at the case of *Deshotel v. Thistleth-*

waite, 240 La. 12, 121 So. 2d 222. I don't know what would be the more injurious to reputation, I don't know whether it would be more injurious to be referred to as a coward or whether it would be more injurious to be referred to as a thief or a dishonest officer of the law.

On that point and with regard to what you stated about Section 315 of the Federal Communications Act, it is my opinion that that act does not apply to Captain Thompson because I do not believe him to be a public official, though I know he is a public employee, like Mrs. Dobbs, my clerk, and countless others that we have enforcing the law, but I do not think that was intended to apply to other than public officials. If I am wrong about that, you will have to straighten me out, because if he is a public officer, so to speak, then the rules may be entirely different.

While not in evidence and having nothing to do with the case, while I was listening to the testimony, I have remembered that I had run out of money and needed some and had borrowed some money from a lawyer who had a case in my court. I gave it no thought, we were and had been friends, just as I am and have been with practically every member of the bar. I was just thinking to myself how that would look out in print or on T. V. I don't know whether the lawyer won or lost his case. I can't recall it, but I remember that I was out of money and rather than cash a check, I got it from him. I have no idea whether he won or lost the case or what case it may have been, but I sure realize the impropriety of it and what it could have done to

me. I certainly had no dishonest motive. I just forgot to cash a check and borrowed money from a friend, which all of you lawyers are to me, and I can see right now that if somebody got on T. V. and put it out that money had passed between me and the lawyer and he had won the case, I really would have been in a fix. The more I would have tried to explain it, the worse it would have gotten.

Mr. Thompson states he gets money for a contribution to a charity, and, of course, to those people there money was passing hands between him and Ed Partin. Yet, I know unions, management and everybody else contributes to those drives. Dishonest motives can be attributed to an entirely innocent act. I will tell you one thing, from now on, if I run out of money, I am going to borrow money from the bank or go find a place to cash a check or do without.

This brings up the amount of the award, and that is the hardest thing about being a judge, to determine what is a fair award. If I am not mistaken, where the damages are libelous per se and are of such a nature as to injure and degrade the character of a person, malice is inferred. While the damages are not punitive, the Court can only in its discretion make an award which I believe may at the best be arbitrary. Like I said before, I don't know who is talking about Captain Herman Thompson and believes he and Ed Partin are crooks together, and there is no way of knowing, except to say that if you are a lawyer and you get written up as being dishonest or you are a policeman and the inference from the remarks made is that you

are not honest or would engage in some conspiracy, you just cannot recover from that without some damage, because I believe people remember bad things about you for a long, long time. Also, I don't know, it is not in evidence, and I only know this by hearsay, but I don't know what Mr. St. Amant makes. I know he is a retired Army officer. You have to balance that also against Captain Thompson and the damage to his reputation. I don't think that he has been harmed insofar as any monetary loss is concerned. His employers think as much of him today as they did at the date of this speech. He has lost no money. If I was fooling with WAFB-TV or with the Item Publishing Company, as in the Kennedy case and others, the award would be considerably higher than I am going to give.

I fix the award in favor of Captain Thompson and against Mr. St. Amant at the sum of $5,000.00.

Mr. Van Buskirk, we will furnish you with all of my remarks made in court today, and I will hold Mr. Kleinpeter off, and I know that he will do so voluntarily, from getting the judgment signed until you can examine them, and if you have any other argument that you wish to make and have found me incorrect in the law in any way, then you will have that opportunity.

I will sign a judgment accordingly in favor of plaintiff as stated.

Baton Rouge, Louisiana, this 8th day of May, 1964.

/s/ Fred A. Blanche, Jr.
JUDGE, 19TH JUDICIAL
DISTRICT COURT

APPENDIX B

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION "B"
PHIL A. ST. AMANT	*	JUDGMENT

This cause came up for hearing upon a motion for a new trial filed herein by the defendant praying that the judgment signed herein on May 13, 1964 be set aside and that a new trial be granted. When, after reading the pleadings, the written memorandum for plaintiff and defendant, and for written reasons assigned, the law and evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that the motion for a new trial filed on behalf of the defendant be denied and that the judgment signed herein on May 13, 1964 be and it is hereby made the judgment of this Court as originally rendered.

JUDGMENT RENDERED in Open Court on the 22nd day of January, 1965.

JUDGMENT READ AND SIGNED in Open Court on the 27th day of January, 1965.

/s/ FRED A. BLANCHE, JR.
JUDGE,
19th Judicial District Court

HERMAN A. THOMPSON	NUMBER 88,779,
VS.	DIVISION "B"
PHIL A. ST. AMANT	19TH JUDICIAL
	DISTRICT COURT
	PARISH OF EAST
	BATON ROUGE
	STATE OF
	LOUISIANA

REASONS FOR JUDGMENT

The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case

of *New York Times Company v. Sullivan*, 84 S. Ct. 710 (1964). That case held that:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was . . . false or with reckless disregard of whether it was false or not."

Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with "actual malice" — that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

The case of *State v. Mayeux*, 81 So. 2d 426, had considered the status of a deputy sheriff such as the plaintiff Captain Thompson:

> "A deputy sheriff is a state officer created by the Legislature and his appointment is provided for in LSA—R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein."

In *Gray v. De Bretton*, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

> "The relation between a sheriff and his deputy is an official and not a private relation. *The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law.* As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself." (Emphasis added)

Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that "All officers . . . shall take the following oath or affirmation . . .," and R.S. 33:1433 under the title of "Public Officers" provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

Having found plaintiff to be a public officer, the rule enunciated in *New York Times Company v. Sullivan, supra,* is applicable, namely, that malice may not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or "with disregard of whether it was false or not."

Previously, the Court in its oral decision from the bench applied the Louisiana Law which was just recently stated in the case of *Lamartiniere v. Daigrepont,* 168 So. 2d 373 (October 27, 1964), La. App. 3rd Cir.:

> ". . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opprobrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to recover damages without proving special injury to the party defamed."

Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in *New York Times Company v. Sullivan (supra)* the plaintiff has shown actual malice.

Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw what-

ever inference it liked with regard to his reference to Captain Thompson.

Therefore, if Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case "with disregard of whether it (the statement) was false or not."

The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein.

Baton Rouge, Louisiana, this 22nd day of January, 1965.

/s/ Fred A. Blanche, Jr.
JUDGE,
19TH JUDICIAL
DISTRICT COURT

APPENDIX C

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

Feb. 28, 1966

HERMAN A. THOMPSON :
VS. : NUMBER 6571
PHIL A. ST. AMANT :

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT, WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, HONORABLE FRED A. BLANCHE, JR., JUDGE PRESIDING.

Before ELLIS, LOTTINGER, LANDRY, REID, and BAILES, JJ.

REID, J.

Plaintiff in this action, Captain Herman A. Thompson of the East Baton Rouge Parish Sheriff's Department, alleges he was libeled and slandered by the defendant, Phil A. St. Amant, in a television address made by the defendant and a subsequent printed news release prepared by the defendant.

The case was tried on May 5, 1964 and for written reasons assigned May 8, 1964, judgment was rendered against the defendant awarding the plaintiff the sum of $5,000 damages. Judgment was signed May 13, 1964. A motion for a new trial was filed May 18, 1964, and for written reasons assigned January 22, 1965, judgment was signed January 27, 1965 denying the motion for new trial and decreeing the judgment of May 13, 1964 the judgment of the District Court as originally rendered. It is from that judgment that defendant has lodged this appeal.

The undisputed facts of this case show that the defendant, Phil A. St. Amant, had qualified as a candidate for United States Senator against the incumbent, Senator Russell E. Long, in the Democratic Primary of 1962, and on June 27, 1962, the defendant made an appearance on WAFB-TV, Channel 9, Baton Rouge, Louisiana, during which certain remarks were made about the plaintiff. The general context of the speech was made available to the press and given wide publicity by the press.

The record shows that the political method used in this particular instance was one so frequently used, that is, to allege certain wrongdoings on the part of one individual or group of individuals and then allege a connection between that individual or group of individuals and a politician. In the present case it was sought to show a connection between Senator Long and one E. G. Partin, local leader of the Teamsters Union who was accused of all sorts of wrongdoings.

Insofar as the record here is concerned, the alleged slanderous and libelous material is contained in an affidavit by a Mr. J. D. Albin, an ex-member of the Teamsters Union, which was read by the defendant Mr. St. Amant during his television program. It appears that while the television station would be protected from statements made by Mr. St. Amant as a political candidate under the equal time provision of the Rules of the Federal Communications Commission, it would not be protected from statements made by Mr. Albin if those statements were made by St. Amant over the television. For that reason the television station personnel required that the defendant read the entire affidavit, which was in the form of questions and answers. The affidavit by Mr. Albin was most broad in its accusations of various acts of commission and omission on the part of Mr. E. G. Partin, including his being involved or connected with Fidel and Raoul Castro, his misuse of Union funds, and his committing various acts of violence. It barely mentioned Mr. St. Amant's opponent. That portion of the affidavit which plaintiff contends was slanderous is set forth below:

"Mr. Albin:

> Yes, Frank L. Doughty on March 21st, wrote a letter to Arthur Goldberg with a copy being sent to James R. Hoffa, asking for an investigation of Teamsters Local Union #5. On the 25th, Frank L. Doughty received a reply from James R. Hoffa asking for information, any and all information concerning these charges. On Monday morning, Frank L. Doughty, which was the 27th of March, he

mailed this information to Jimmy Hoffa. Later in the day, I found out Ed had, in the letter coming from Hoffa, it said on the bottom of it a notation, copies sent to Teamsters Local Union #5. Now Ed received this copy on Monday. He became pretty riled up about it and in the afternoon, A. G. Kline, who was still working at that time as an assistant and an organizer for Local Teamsters Union #5, told me that Johnny Birch had stopped him on the Airline Highway and told him Ed wanted him to help him get rid of the safe that night, that there was going to be an investigation of the local union and the records had to be destroyed and it was going to take four men to do it. He told him who all was supposed to be in on it and that they were supposed to take it to Bruce Hunt's shop. That is the man that owns Triple A construction, and cut it open that night, that it had been okayed with Bruce. Kline didn't want to be involved in this so he got his brother in New Orleans to send him a telegram so he could get out and still stay in Ed's good graces, because at this time, we still felt that there was further information that could be derived from his employment in Teamsters #5 and we knew something had to be done if we were ever to straighten out the local union. The only way to straighten it out was the removal of E. G. Partin. Now we knew that this safe was going to be removed that night. *Imagine our predicament knowing of Ed's connection with the sheriff's office*

through Herman Thompson who made recent visits to the hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman. We also knew of his connections with State Lieutenant Trooper Joe Green. We knew we couldn't get any help from there and we didn't know how far he was involved in the sheriff's office or the State Police office through that and it was out of the jurisdiction of the City Police. (Emphasis by the Court)

"Col. St. Amant:

What did you do then?

"Mr. Albin:

Well, we rode around awhile trying to decide what to do. Finally, we decided that we would go to the hall ourselves and see if there was any way we could stop them if we saw them coming out with the safe. We arrived a little too late, somewhere in the neighborhood of 9:00, the safe was gone. The next morning there was an investigation. Brother Herman Thompson came out and investigated and I understand that Lieutenant Joe Green showed up. They seemed to think it was a job by a professional. I agree with them."

The above quoted portion contains the sole reference upon which plaintiff's case is based.

In the Trial Judge's original reasons for judgment and in the briefs filed by counsel for plaintiff and for

defendant much jurisprudence is cited and there is a great deal of discussion as to what does or does not constitute actionable libel or slander. However, since the rendition by the Supreme Court of the United States in the case of *New York Times Company v. Sullivan*, 376 U. S. 254, 84 S.Ct. 710, and in *Garrison v. State of Louisiana*, 279 U. S. 64, 85 S.Ct. 209, most of what was discussed is now moot and of no relevancy.

Before discussing the effects of the above cited decisions on actions of libel and slander in Louisiana, we feel we should point out certain factual matters, some contested and some uncontested, which are relevant to the issues herein and which will determine whether or not the issues in this case fall within the rule laid down by the United States Supreme Court in the recent decisions cited above.

It is undisputed that the plaintiff, Herman A. Thompson, is a well qualified, experienced law enforcement officer, having graduated from the F.B.I. National Academy, Southern Police Institute of Louisville, Kentucky, and is also a graduate of all phases of the Louisiana State University's law enforcement training program and of the East Baton Rouge Parish Sheriff's Department's own training school. He has the complete confidence of his employer, Sheriff Bryan Clemmons. Sheriff Clemmons testified that it was part of plaintiff's duties to participate in various fund-raising drives for East Baton Rouge Parish, including the Baton Rouge Kids' Baseball Clinic, the Mothers' March, March of Dimes, Elk's Christmas Funds Baskets, and others.

The undisputed facts also show that the plaintiff, Herman A. Thompson, was acquainted with the said E. G. Partin; that they were on first name basis; and that plaintiff was a frequent visitor the Union Hall. Captain Thompson admitted this in his testimony:

"Q. Isn't it true that you were a rather frequent visitor at the Union Hall and used to drop in once a week or maybe every ten days:
A. That's right.
Q. To pass the time of day?
A. To pass the time of day and just to talk to the two secretaries, to use the phone and different things like that."

He also admitted that he collected charitable contributions from Ed Partin for the Baton Rouge Kids' Baseball Clinic.

With regard to the stolen safe referred to in the quoted portion of the affidavit, the plaintiff testified that he investigated the matter with Chief Criminal Deputy George LeBlanc, who made the report, and that the Crime Lab from the State Police also assisted, and he added: "I will have to admit that there was not as much effort put out as should have been for the simple reason the night before someone had burglarized Food Town of over fifteen thousand dollars and a lot of drugs were involved and it had everyone of us tied up on that."

Both the plaintiff and Sheriff Clemmons admitted that various members of the Union might be aware that Mr. Partin on occasion gave Mr. Thompson money for some purposes, and while they both insisted that these funds were charitable contributions collected by the plaintiff for the Sheriff's office to be distributed to the proper charities, it is not inconceivable that some union members might have been suspicious of this exchange of funds.

Mrs. Marjorie Ann Smith was called as a witness in behalf of the defendant. She had been employed as a secretary for Teamsters Local No. 5 from September of 1958 to August of 1961. She testified that the latter part of February or the first part of March, 1961, she received instructions from Mr. Ed Partin and "called Mr. Herman Thompson at the Sheriff's office and he wasn't in, so I left word for him to call the Union, that we had something down there for him, and he was gone on a fishing trip and so a couple of days later Mr. Thompson came by the Union Hall and he said he wanted to pick up the envelope, and so Jeanette handed it to him out of her desk drawer and he folded it and put it in his pocket." She further testified that before Captain Thompson came to pick up the envelope she and Jeanette, another secretary working with her, opened the envelope and found that it contained five twenty dollar bills. She was asked what they did after they opened the envelope and she said:

"A. We put it in another envelope and sealed it up.

Q. Now, what type of an envelope was it in,

Mrs. Smith, in the first place?

A. It was a legal size envelope, one of the Teamsters', with the Teamsters' emblem and address on it.

Q. Was it addressed to anyone?

A. It just had Herman Thompson's name on the front of the envelope.

Q. Are you familiar with the handwriting in which the name 'Herman Thompson' was written?

A. Yes, sir, it was Mr. Partin's."

When asked what prompted them to open the envelope she said they knew Mr. Partin was under investigation and they were just wondering what was in the envelope. She could not, however, remember whether she ever reported this incident to the law enforcement officers and said "I have been before the Federal Grand Jury and I can't remember if that was brought out or not." She also admitted that she knew Captain Thompson had picked up some checks for Kids' Baseball; that it was not unusual for Mr. Partin to give money for all the major campaigns in the area, but that this was the first cash she had ever seen. She said Captain Thompson came by the Union Hall more frequently than other officers, usually while on duty and dressed in a suit, but sometimes when he was off duty and dressed in casual clothes and that sometimes he brought his little boy with him.

The testimony of the defendant, Mr. St. Amant, is, of course, also relevant and we quote below the pertinent portion thereof:

"Q. Now, sir, at the time you made your speech, did you give any consideration whatsoever or anything at all to what effects the reference to Captain Herman Thompson's name in this speech might have upon him?

A. Actually, when the original tape was made, and understand that when I read the affidavit I did not feel that I had any right to read parts of an affidavit or to just take sections from it. I do not understand the law on this, but I believe if I am going to give a document or affidavit, I should give the whole thing, and as I asked the question, I never mentioned the name of Herman Thompson. Herman Thompson wasn't even in my mind. I didn't even ask anything concerning the Sheriff's office. I asked quite an entirely different question, as you will see from the transcript, and out of this came a long story in which Mr. Thompson's name was used as explanation of why he felt there was a close personal relationship there that would keep him from going to the Sheriff's office. I neither elicited his name nor did I anticipate his name. Now, when I read the affidavit, I knew the name was in there and I did not consider that this was going to do anything to Mr. Thompson. In fact, I believe it has not. He was a Captain and is a Captain. I don't believe he has been suspended for five minutes and I don't believe he has lost any pay.

Q. Mr. St. Amant, with that knowledge and knowing that this reference to Captain Thompson was in this speech, you then permitted this very speech that we have listened to to be transcribed and circulated to the members of the press?

A. I certainly did. I don't know what this money was for, Mr. Attorney. I did not suggest what the money was for, nor has—did Mr. Albin suggest what it was for. This could have been for his favorite charity for all I know, but as Mr. Albin explains, he couldn't go to him because he was contributing to this man, for whatever purpose. A close personal relationship existed.

* * * *

Q. So you left, you made the remarks, and left the inferences for the public to draw what they might, is that right?

"A. I made the remark and let the public draw the conclusion that they might from the remark, which I believe was properly made at the time. I think you will find that Mr. Thompson's name, except from in quoting Mr. Albin, was never mentioned by me and no inference was drawn by me in further questioning that followed this. I had no interest at the time in Mr. Thompson. I had interest in Senator Russell Long, and I wanted to establish that here is a man in the public eye in a most disrep-

utable fashion, and I am sure Mr. Thompson did not think I was speaking of him. I was speaking of the business agent who was notoriously in trouble at the time and was being helped out by a United States Senator to the detriment of his men, to the detriment of the working people of this parish. I believe this was true and I presented it as such. I have had no suits or opposition on this score from anybody else.

Q. In other words, Mr. St. Amant, you were after the big shot, so to speak, Senator Russell Long, and were not worried about the smaller individual, so to speak, that might have been involved down the way, is that correct?

A. Let's not draw an inference from my answer on that. I was not concerned with them. I did not think it concerned them."

It is clear that the Trial Judge was aware of the effect of the New York Times decision, supra, upon actions of this type for he granted a rehearing in order to consider the effect of that case upon the case at issue. The Garrison case, supra, was decided after the New York Times decision and was not considered by the Trial Judge in his reasons for judgment on rehearing. Although the Garrison case dealt with the Louisiana defamation statute, LSA-R.S. 14:47, it is also most relevant to the case at issue for in the Garrison case the rule of the New York Times case on libel was applied to the Louisiana statute and the comments

and explanations of the rule in the Garrison case are therefore relevant to the case at issue since it is clear from a reading of both cases that the rule for libel in cases regarding a public official's conduct is the same whether it be civil libel or criminal libel.

We quote below the Trial Judge's Reasons for Judgment on rehearing:

> "The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case of *New York Times Company v. Sullivan*, 84 S. Ct. 710 (1964). That case held that:
>
> > " 'The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was . . . false or with reckless disregard of whether it was false or not.'

"Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with 'actual malice'—that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

"The case of *State v. Mayeux*, 81 So. 2d 426, had considered the status of a deputy sheriff such as the plaintiff Captain Thompson:

> 'A deputy sheriff is a state officer created by the Legislature and his appointment is provided for in LSA-R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein.'

"In *Gray v. De Bretton*, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

> " 'The relation between a sheriff and his deputy is an official and not a private relation. *The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law.* As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself.' (Emphasis by the Trial Judge)

"Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that 'All officers . . . shall take the following oath or affirmation . . . ,'' and R. S. 33:1433 under the title of 'Public Officers' provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

"Having found plaintiff to be a public officer, the rule enunciated in *New York Times Company v. Sullivan, supra,* is applicable, namely, that malice may not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or 'with disregard of whether it was false or not.'

"Previously, the Court in its oral decision from the bench applied the Louisiana law which was just recently stated in the case of *Lamartiniere v. Daigrepont,* 168 So.2d 73 (October 27, 1964), La. App. 3rd Cir.:

> " '. . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opprobrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to

recover damages without proving special injury to the party defamed.'

"Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in *New York Times Company v. Sullivan (supra)* the plaintiff has shown actual malice.

"Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw whatever inference it liked with regard to his reference to Captain Thompson.

"Therefore, it Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case 'with disregard of whether it (the statement) was false or not.'

"The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein."

We feel that the definition of a public official as set forth in the Judge's reasons for judgment on rehearing clearly answers the question as to whether or not the plaintiff is or is not a public official, and therefore the plaintiff's contention, as set forth in his brief,

that he is not a public official has no merit, and the rule of the New York Times case does apply to plaintiff. We make this statement fully aware that in footnote 23 in the New York Times decision the Court said: "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included." Nor do we agree with the contention that as the Court in the New York Times case did not define official conduct, that the conduct herein was not official but of an extracurricular activity, that is, soliciting money for civic charities. This position is also without merit because it is not that conduct which is criticized in the affidavit. The affidavit deals with the fears of the affiant concerning the manner in which the plaintiff would or would not discharge his duties if the mentioned safe was stolen. It is the relationship of Mr. Partin and the plaintiff in his official capacity that is the subject of the affidavit, not the reason for the plaintiff's appearances at the Union Hall.

In the New York Times case the Court held that the Constitution limits state power in a civil action brought by a public official for criticism of his official conduct to an award of damages for a false statement "made with 'actual malice' — that is with knowledge that it was false or with reckless disregard of whether it was false or not." *Garrison v. State of Louisiana, supra.* Therefore, the central issue in this case is whether the facts bring it within the rule of the New York Times case, which rule was further enunciated in the

Garrison case, and that is, were these statements made with "actual malice — that is with knowledge that it was false or with reckless disregard of whether it was false or not." The record does not show that the statements made by the defendant about the plaintiff were made with knowledge that they were false. Therefore, we are not concerned with that portion of the definition of actual malice that deals with "knowledge that it was false" but there is no proof, but are concerned with whether or not, in view of the facts in the case, the statements made by the defendant were made "with reckless disregard of whether it was false or not." It should be pointed out that the proof of actual malice is on the plaintiff, *New York Times Company v. Sullivan, supra,* that is, the plaintiff must prove that the statements were made with the knowledge that the same were false or with reckless disregard as to whether such statements were false or not.

Neither the Garrison case nor the New York Times case sets forth with any degree of clarity the steps the plaintiff must or must not take in order to determine whether or not statements were made with reckless disregard as to whether such statements were true or false. Mere negligence in determining whether or not a statement is correct is not a showing of actual malice. New York Times Company v. Sullivan, 376 U.S. 254, 288, 84 S.Ct. 710, 730. Nor does speaking out of hatred mean actual malice under the New York Times and Garrison rule. In the Garrison case the Court said:

"Moreover, even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Under a rule like the Louisiana rule, permitting a finding of malice based on an intent merely to inflict harm, rather than an intent to inflict harm through falsehood, 'it becomes a hazardous matter to speak out against a popular politician, with the result that the dishonest and incompetent will be shielded.' Noel, Defamation of Public Officers and Candidates, 49 Co.L.Rev. 875, 893 (1949). * * *"

A study of the New York Times case and the Garrison case makes it clear that there must be more than an inference drawn before a statement can be said to fall within the rule of those cases. The mere fact that criticism of the manner in which a public official performs his duties would tend to affect his private reputation as well as his public reputation would not render inapplicable the New York Times rule. Garrison v. State of Louisiana, 379 U. S. 64, 77, 85 S.Ct. 209, 217. It would certainly follow that if the statement made by the District Attorney of Orleans Parish and

quoted in the Garrison case to the effect that

> "The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints,"

is not libelous under the New York Times rule (the application of the civil rule of libel as announced by the Supreme Court in that case to criminal libel in Louisiana), then certainly the statements made by the defendant Mr. St. Amant in the present case would not be libelous under that rule.

There is only one statement in the affidavit involved in this case which could possibly have damaged Captain Thompson and that was the statement "we also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman." Since the facts show that the plaintiff was well acquainted with Mr. Partin and had been seen by the Union people collecting money at the Union Hall (which could conceivably make a discontent Union member who was opposed to the Union leadership suspicious of the relationship) the use of the quoted statement could not be said to have been used with reckless disregard as to whether false or true.

The statement of the Trial Judge that Mr. St. Amant did not have any interest in Captain Thompson and did not know what the money was for, which the Judge

said is evidence that he made no attempt to investigate whether his statements were true in order to justify his charge that Captain Thompson was being paid off and that he gave no consideration as to what effect the remarks might have on Captain Thompson's reputation and character but was content to let the public draw whatever inference it desired, would not place the case under the New York Times rule of proving he acted with reckless and wanton disregard for whether the statement was false or not. This actually was another way of applying the rule of *Lamartiniere v. Daigrepont*, 168 So.2d 373, quoted by the Trial Judge, in that the Trial Judge was imputing malice to the act on account of its character.

It is clear from the record in this case that the reputation of Captain Thompson, who is highly regarded and a well respected police official, was injured by the statements made, which statements had no relevancy whatsoever to the issue which the plaintiff was attempting to get across to the public, and that Captain Thompson was the victim of intemperate "mud slinging." It is also the opinion of this Court that prior to the decisions of the United States Supreme Court in the New York Times and the Garrison cases the words of the plaintiff would have been libelous under the Louisiana jurisprudence. However, in view of the U. S. Supreme Court's holding that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct, as discussed above, this Court has no

alternative but to hold that the judgment of the Trial Court is in error and should be reversed and there should be judgment in favor of the defendant dismissing plaintiff's suit at his cost.

REVERSED.

APPENDIX D

SUPREME COURT OF LOUISIANA
Monday, Feb. 20, 1967

No. 48,184
HERMAN A. THOMPSON
vs.
PHIL A. ST. AMANT

ON WRIT OF REVIEW TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

SUMMERS, Justice.

This action for $150,000 in damages for an alleged libel was instituted by Herman A. Thompson, a deputy sheriff of the parish of East Baton Rouge, against

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McCALEB, J., dissents with written reasons.
HAMLIN, J., dissents, being of the view that the result reached by the Court of Appeal is correct. See also Time vs. Hill, 87 SCt., 534.

Phil A. St. Amant, a retired Army officer and business man of that parish.

The trial court found that the plaintiff, Thompson, had made out his cause of action and, accordingly, condemned the defendant, St. Amant, to pay $5,000 as damages. Upon proper and timely application, a new trial was granted to reconsider the case in the light of New York Times Co. v. Sullivan, 376 U.S. 254 (1964), which had been handed down in the meantime. After reconsideration the trial judge reinstated his original judgment. On appeal the First Circuit reversed, and we granted review on Thompson's application.

The petition alleges that, on June 27, 1962, St. Amant, who was then a candidate for the office of United States Senator, appeared on a television program in Baton Rouge and delivered a political campaign address which was also reduced to writing and distributed to the press and other news media.

In the beginning of his speech St. Amant said:

> "I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal, and ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence; death resulting

from the commission of a felony and a second death by a hit and run by a union car."

The address thereafter consisted principally of the reading by St. Amant of a transcript of an interview which he had previously had with one J. D. Albin, a member of the local Teamsters' Union. The interview was in question and answer form, with St. Amant asking the questions which Albin answered. At St. Amant's urging, Albin had sworn to the correctness of the facts he recounted, and St. Amant had possession of the affidavit in written form.

By its content the speech was unmistakably designed to disclose Albin's knowledge of illegal, unsavory and criminal actions by E. G. Partin, business agent of the local Teamsters' Union. In the speech St. Amant claimed Senator Russell B. Long, his opponent and the incumbent United States Senator, had recommended Partin to James Hoffa, the union president. By this disclosure he sought to disparage his opponent.

Included among Partin's activities, according to Albin's statements which St. Amant read, was a visit by Partin with Fidel and Raoul Castro in Cuba during November 1960. St. Amant quoted Albin as saying that Partin was responsible for the negotiation of a labor contract in Baton Rouge, giving up many wage benefits and surreptitiously continuing a practice of longer working hours contrary to the interest of union members. Partin was accused of using union funds for his personal benefit, to pay house notes and the rent for his girl friend's car.

Albin related that Partin took "numerous amounts of money out of the cash drawer during the week and at the end of the week he made this up by making a check out to someone else who would endorse it and they would deposit it into the union fund." Albin then relates, in response to St. Amant's questions, that these practices prompted a local union member to write a letter to Arthur Goldberg, then Secretary of Labor, with a copy to James Hoffa, asking for an investigation of Partin's local union by the union hierarchy. According to Albin, when Partin learned of this he became "pretty riled up" and enlisted four members of the union to "help him get rid of the safe" which contained the union records. Albin continued:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police."

In his narrative Albin asserted that the safe disappeared that night, and that Thompson and Lieutenant

Joe Green of the State Police investigated the case but nothing happened. The safe turned up "a few months later, Albin said, when a young man by the name of Forman dove off the river bridge and hit his head on the safe . . . killing himself." This death St. Amant and Albin characterized as "a death resulted (sic) from the commission of a felony." They concluded Forman's death was a "murder" for which, they implied, Partin was responsible.

Then followed statements by Albin, all of which were likewise read by St. Amant, purporting to give information from Partin's "rap sheet", revealing that Partin had been either arrested, charged or convicted for robbery, auto theft, breaking and entering, "second degree burglary", rape, and robbery with firearms. Albin charged that Partin was responsible for the death of a young soldier in Alabama, killed in a hit-and-run automobile accident while Partin was driving the offending vehicle.

St. Amant continued to read the transcript of his interview with Albin, quoting Albin's story of why A. G. Klein, a good friend and a union member, was not "testifying today." He quoted Albin as saying that Klein, who had knowledge of the "safe incident" and other illegal activities of Partin, testified before a Federal Grand Jury in New Orleans, and that shortly thereafter Klein met his death in St. Francisville when a truck "dropped on top of him loaded with about ninety thousand pounds of sand."

St. Amant's presentation of this political address — the manner in which he expressed himself, the tone and theme of the speech, the obvious manifestation of his belief in the veracity of Albin's statements — was calculated to impress upon the reader or listener that he had confidence in Albin's charges against Partin and Thompson and that he believed them to be true. The publication was principally designed to malign the conduct of the incumbent United States Senator; but to do this it was necessary to show Partin's unsavory character and criminal record. Thompson's name was brought into the story only incidentally, yet, he was nonetheless unmistakably accused of criminal conduct.

In his petition Thompson alleged that the publication by St. Amant was false, libelous, scurrilous and malicious and was intended to belittle, degrade and ridicule him. Clearly, he alleged, the publication reflected a design and intent on the part of the defendant, St. Amant, to defame, slander and libel Thompson's good name, reputation and character before his friends, the courts and the public in general. From St. Amant's remarks, the petition alleges, the false and defamatory imputation arises that Thompson was guilty of gross misconduct of a nefarious nature.

In his answer St. Amant admitted making the speech but denied that he defamed or intended to defame Thompson. He alleged that the context in which the remarks concerning Thompson were made shielded those remarks from any defamatory imputation. In the alternative, he alleged that the utterances concerning Thompson were true and their publication was for the

public good. Even if not true, he alleges, there was no malice on his part.

As it is settled in Louisiana that the truth of a defamatory remark is generally a valid defense in a civil suit for defamation, it becomes necessary to decide initially if the remarks concerning Thompson were true. If they are shown to be true that would ordinarily end the case. If the utterances are false, however, we must then proceed to determine if they are defamatory and actionable. La. R.S. 13:3602; Deshotels v. Thistlewaite, 240 La. 12, 121 So. 2d 222 (1960). Both the trial court and the Court of Appeal decided that the statements were not true, and we agree.

By his testimony at the trial, Thompson acknowledged that he first knew Partin in connection with labor disputes — to which Thompson had been assigned for duty. He got to know Partin better, he said, while investigating burglaries at the union hall. In fact, because he had been designated for special duty by the sheriff, he was required to come in contact with almost all of the union business agents in Baton Rouge. He knew them all by their first names and readily conceded that he received funds from Ed Partin when he picked up a check every year for the Baton Rouge Kids' Baseball Clinic. The United Mine Workers, pipefitters', electricians', carpenters', and other unions and several civic and charitable organizations were also solicited by him.

Other duties assigned to him included supervising a bell-ringing campaign for the Salvation Army solicit-

ing for the Volunteers of America, the March of Dimes, the Cystic Fibrosis Fund, the Elks Club and the Lions' Club. He assisted in these civic and charitable undertakings as a public service. And except for such solicitations, he had no connection with Partin other than as a law enforcement officer.

An effort was made to discredit Thompson's testimony that he had only received "checks" from Partin in the solicitations. Partin's former secretary, Marjories Ann Smith, testified that Partin once gave her an envelope for delivery to Thompson. She stated that she and Jeanette Fletcher, another employee in the union office, opened the envelope and saw five twenty-dollar bills. According to Marjorie Ann Smith's testimony, Jeanette Fletcher handed the money to Thompson in a sealed envelope. Thompson, however, categorically denied having received any cash. The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations. Since Marjorie Ann Smith's testimony was rejected and Jeanette Fletcher did not testify, there is no evidence to support the charge that "money passed" from Partin to Thompson. On this vital issue of fact, which bears so heavily on our decision, we agree with the trial court and the Court of Appeal.

Moreover, as the determination of this issue involves the credibility of the witnesses Thompson and Smith and because there is no other evidence upon which a

contrary result could be reached, the record will not support reversal of the findings of both the trial court and the Court of Appeal. Not only do we find that the remarks about Thompson were false, we find that the record reflects impressively his integrity and good character.

Thompson admitted that checks passed to him from Partin as a solicitation for the Baton Rouge Kids' Baseball Clinic, but the remarks contained in St. Amant's publication say much more. Sheriff Bryan Clemmons, Thompson's employer, found it necessary to defend Thompson against the charges contained in the speech. For many citizens called the sheriff for an explanation because they believed that St. Amant had accused Thompson of taking a pay-off from Partin. A neighbor who heard the broadcast told Thompson that "some man" had called him "some kind of thief and all kinds of names." The meaning the controverted remarks convey to the average reader is utterly defamatory of Thompson.

Preceded and followed as the remarks about Thompson were by the numerous charges of criminal conduct on the part of Ed Partin, linked as those words were with the sequence of events concerning the theft of union funds and the destruction of the safe, it is difficult to ascribe to the words "We also knew of money that had passed hands between Ed and Herman Thompson .... from Ed to Herman" any meaning except that they charged Thompson with taking a criminal pay-off from Ed Partin. Charging that "we knew we couldn't get any help from there", in the context

in which it was used, was a charge that Thompson would aid and abet the wrongdoer rather than perform his duty and enforce the law or otherwise help prevent the commission of a crime. And it is fair to conclude that the defamatory character of these words was in all probability heightened by a dramatic oral presentation.

These are statements of fact. They cannot be said to be expressions of opinion or comments within the rule of "fair" comment. 1 Harper & James, Torts § 5.26 and § 5.28 (1956).

It is one thing to state an innocent fact; it is another to state it in such a manner that it charges criminal conduct to the average listener and to a significant segment of the community. In the latter instance, the party who utters the words bears the burden of establishing either their truth or some justification sanctioned by law; otherwise he must bear the legal consequence of his indiscretion and the injury suffered by the victim of his remarks. In a civil suit those consequences are damages measured in money. Lewis v. Louisiana Weekly Publishing Co., 189 La. 281, 179 So. 315 (1938).

In keeping with this principle, this court in recent years said that:

> "A mere insinuation is as actionable as a positive assertion, if the meaning is plain; and if the words used, when taken in their ordinary acceptation, convey a degrading imputation, no matter how indirectly, they are libelous — it

matters not how artfully their meaning is concealed or disguised." Madison v. Bolton, 234 La. 997, 1010, 102 So. 2d 433, 437-438 (1958).

The guarantees of freedom of speech and of the press embodied in our state and federal constitutions, though designed to assure broad freedom for the expression of opinion, do not permit unrestrained license or confer the right upon an individual to speak or print whatever he chooses without bearing the responsibility for the utterance. Where the published matter is false, malicious and injurious, full responsibility for the damage it may cause is exacted by the law, unless a proper defense or justification is established. Kennedy v. Item Co., 213 La. 347, 34 So. 2d 886 (1948), Fitzpatrick v. Daily States Publishing Co., 48 La. Ann. 1116, 20 So. 173 (1896).

Realizing that these propositions would establish his legal responsibility for false and defamatory utterances, St. Amant asserts that, if we find the remarks to be false, then his defense is that Thompson was a "public official". Thus, he is prohibited from recovering damage for a defamatory falsehood relating to his official conduct, unless he proves the statement was made with "actual malice" — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. He relies upon the ruling in New York Times Co. v. Sullivan, 376 U.S. 254 (1964) to support this contention.

In the New York Times Case, the United States Supreme Court held that, in a civil action brought by a

public official for criticism of his official conduct, the First and Fourteenth Amendments to the Federal Constitution limit state power to an award of damages for a false statement "made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not." See Garrison v. Louisiana, 379 U.S. 64 (1964).

Thus the issue is clearly formed. At this phase of our deliberation we must decide whether Thompson, a deputy sheriff, is a "public official" within the meaning of the rule announced in the New York Times Case. We hold that he is.

A deputy sheriff is a state officer whose position is created by the legislature. His appointment is provided for by Title 33, Section 1433, of the Revised Statutes of this State. State v. Mayeux, 228 La. 6, 81 So. 2d 426 (1955); Williams v. Guerre, 182 La. 745, 162 So. 609 (1935). Article 19, Section 1, of the Louisiana Constitution of 1921 requires that all officers of the State shall take the prescribed oath. This constitutional mandate has been implemented by the legislature to require deputy sheriffs to take that oath (La. R.S. 33:1433). The relation between a sheriff and his deputy, then, is an "official" and not a "private" relation. The deputy is a representative of the sheriff in his official capacity; he is a public officer or official whose authority and duty are regulated by law. So far as the public is concerned, the acts of a deputy are the acts of the sheriff himself.

However, because Deputy Sheriff Thompson is technically a "public official" under Louisiana law, it does

not follow that the rule announced in the New York Times Case applies to this case. The real test is whether the official has, or appears to the public to have, "substantial responsibility for or control over the conduct of governmental affairs." Rosenblatt v. Baer, 383 U.S. 75, 85 (1966). See also Bertlesman, *Libel and Public Men*, 52 A.B.A.J. 657 (1966).

The deputy acts for the sheriff, and his acts are the acts of the sheriff. The sheriff's position in government vests him and his deputies with "substantial responsibility for or control of governmental affairs", at least where law enforcement and police functions are concerned. The New York Times rule applies, therefore, to this deputy sheriff. Gilligan v. King, 48 Misc. 2d 212, 264 N.Y.S. 2d 309 (1965); cf. Henry v. Collins, 380 U.S. 356 (1965) and Pope v. Time, Inc., 354 F. 2d 558 (7th Cir. 1965).

It remains, in the light of the conclusions we have already reached, to determine whether the false and defamatory remarks concerning Thompson were uttered by St. Amant with "reckless disregard" of whether they were false or not.

The most important witness to the crucial fact in this regard was Marjorie Ann Smith. It was she who testified that, following Partin's instructions, Jeanette Fletcher gave an envelope containing five, twenty-dollar bills to Thompson. Her testimony is relied upon to establish the truth of the statement that "pay-off" money passed from Partin to Thompson or, at least, to relieve St. Amant of any charge that his utterances

were in "reckless disregard" of whether they were false or not. Yet the first time St. Amant contacted her to verify this occurrence was after the lawsuit was filed and, of course, long after the political address had been televised and otherwise widely disseminated. Jeanette Fletcher, the only other witness to the occurrence, was not called to testify on this vital issue, and her failure to do so was not explained.

Having no personal knowledge of Thompson's activities, St. Amant relied upon Albin's sworn statement to verify the truth of the defamatory matter. Albin, however, did not testify. (St. Amant explained that he was ill and in the hospital.) Nowhere in the record is the reliability or the reputation for truth or veracity of Albin shown.

Although St. Amant testified that he had other affidavits to support some of the facts detailed in his address, none were produced. When asked if he gave any consideration to the effect the speech would have on Thompson, he replied that Thompson "wasn't even on my mind." Partin was his main concern; and in his zeal to show a bad character and background in Partin and to link him to his opponent, he gave no consideration whatsoever to Thompson. He was heedless of the effect his address would have on Thompson or of the truthfulness or not of the statements concerning him.

St. Amant's testimony indicates that he was laboring under the mistaken impression that because the words concerning Thompson were not in themselves defamatory he could not be involved in what might be implied

from those words, such as the charge of criminal conduct which was implicit in them because of the context in which they were used. St. Amant felt he would be shielded from any responsibility because he was quoting Albin. In his own words, "Herman Thompson wasn't even on my mind." It was reckless error for him to take this position. Such a faulty assumption was in utter disregard of whether the remarks about Thompson were true or false.

We think the record contains adequate proof of actual malice on the part of St. Amant — that is, a reckless disregard as to whether the statements concerning Thompson were true or not.

Although "public men are, as it were, public property"[1] we do not feel that the freedom of "uninhibited, robust, and wide-open"[2] debate on public issues guaranteed by the First Amendment to the Federal Constitution can "sensibly be turned into an open season to shoot down the good name of any man who happens to be a public servant."[3]

No proof of damages was necessary, and we do not regard the verdict as excessive.

For the reasons assigned, the judgment of the Court of Appeal is reversed, and the judgment of the trial court is reinstated and made the judgment of this court.

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[1]Beauhornais v. Illinois, 343 U.S. 250, n. 18 (1952).
[2]New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[3]Tucker v. Kilgore, 388 S.W. 2d 112 (Ky. 1965).

HERMAN A. THOMPSON VS. PHIL A. ST. AMANT — NO. 48,184

McCALEB, J., Dissenting.

I am in disagreement with all factual and legal conclusions of the majority opinion save one — that is, that plaintiff, Thompson, is a public official whose activities come within the rule laid down by the Supreme Court of the United States in New York Times Co. vs. Sullivan, 376 U.S. 254 (1964).

In the first place, it is my view that the evidence in this case clearly discloses that the *facts* related in the sworn affidavit of J. D. Albin (which affidavit was read by St. Amant on television) are substantially true. Thompson admits in his testimony that he was a good friend of the labor leader, Partin (he called him Ed and Partin called him Herman), and was a rather frequent visitor at the Union Hall. He says that he regularly visited the Hall once a week or every ten days to pass the time of day and talk to the two lady secretaries, also to use the phone and "different things like that". He received contributions from Partin for the Baton Rouge Kids' Baseball Clinic but insists that he was given checks, vehemently denying that any payments were made in cash. At first, he denied that these checks were delivered in envelopes but later admitted that, on one or two occasions, the contribution had been placed in an envelope. He said: "Once or twice there has been an envelope but I never opened it.

I would bring it in and give it to Polly".[1] He testified further that he never received anything other than the contributions from Partin and that, when he graduated from the F.B.I. School and had successfully cleared certain burglaries at the Union Hall, Partin sought to reward him by offering him a suit of clothes and a check as a present. However, he says he rejected the offer and reported the matter to the sheriff.

It is thus seen from Thompson's testimony that Albin's statement in his affidavit — that "We also knew of money that had passed hands between Ed and Herman Thompson *** from Ed to Herman" was true unless it be that there is a technically factual difference in payment by check or by cash.[2]

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[1]Polly, to whom he refers, is Mrs. Coxe, the sheriff's secretary, who, Thompson and the sheriff say, kept the record of the collections made by Thompson (he was specially assigned for this extra curricular activity by the sheriff and he solicited, besides the Teamsters, the Electricians, Carpenters, Pipefitters, United Mine Workers and several other labor unions operating within the Baton Rouge area) in the fund-raising drives for various organizations — Baton Rouge Kids' Baseball Clinic, the Baton Rouge Mothers' March, March of Dimes, Elks' Christmas Fund Baskets, the Eagles Christmas Baskets, Lions Club Light Bulb Sale, the Volunteers of America, Cystic Fibrosis and the Shrine Circus. According to Sheriff Clemmons, it came as no surprise to him that some of the members of the Teamsters' Union (evidently meaning Albin and others) might be aware that Partin was giving Thompson money for some purpose and he further testified that Thompson had received cash as well as checks in his solicitation activities from other sources but not from Partin.

[2]Indeed, Thompson indicates that he did not know whether the payments enclosed in envelopes were made by check or cash, for he testified in rebuttal that, when the payment was in an envelope, "***I just brought the envelope in and gave it to Polly and didn't bother to open it."

True, the affidavit states that "money had passed hands" but in usual parlance the term is broad enough to cover payment by check as well as cash. Yet the majority opinion attaches much significance to the evidence on this score. The opinion relies heavily on the statement of Thompson, an interested witness, and rejects as false and unreliable, the testimony of Mrs. Marjorie Ann Smith, one of the secretaries at the Teamsters' Hall, an apparently disinterested witness, who stated unequivocally that Partin had placed five $20.00 bills (which she saw) in an envelope which was delivered by the other secretary, Jeanette Fletcher, to Thompson under Partin's instructions.

For my part, I perceive no valid reason for the rejection of Mrs. Smith's evidence. The deduction that her testimony is unworthy of belief seems to be founded in part on the failure of St. Amant to call Jeanette Fletcher, the other secretary, who Mrs. Smith says also observed the $20.00 bills in the envelope, to corroborate Mrs. Smith's statement. But I know of no law placing such burden on St. Amant. It is not shown that he was acquainted with or had any control over Miss Fletcher who, as the record shows, was acquainted with Thompson and presumably available to him as a witness. Actually, since this phase of the case reduces itself to the affirmative statement of Mrs. Smith that cash was passed and the denial of Thompson that he received cash (the payment being made by check) it is to be wondered why Thompson did not call his friend, Partin, to the stand to verify his statement. Also, he could have called Mrs. Coxe to whom he allegedly delivered

all checks from the Teamsters, but no cash, according to Thompson and the sheriff.

Moreover, I note that the majority opinion states that "The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations". I have carefully examined the opinions of the trial judge and the Court of Appeal (see 184 So. (2d) 314) and find no ruling by either court rejecting the verity of Mrs. Smith's evidence.[3]

But, be this as it may, it makes no essential difference whether the payment was made in cash or by check. In either case the affidavit that money had passed between Partin and Thompson is an admitted fact. The only suggested difference is that Albin, the author of the affidavit, after relating that Partin withdrew money from the Union funds for his own use and later assertedly arranged for the disappearance of the safe containing the Union records (the accuracy

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[3]The trial judge rested his original opinion on the predicate that the affidavit of Albin was libelous per se. His only reference to Mrs. Smith's testimony is that she stated that money "*** was left in an envelope from Mr. Partin to Mr. Thompson and that he picked up the same." As to this, the judge ruled, in effect, that it was immaterial whether the payments were made in cash or by check since all money paid was received "***purely in connection with drives put on by some charitable institution***", as avouched by the sheriff and Thompson.

The Court of Appeal recited the substance of Mrs. Smith's testimony but made no finding as to her credibility. Indeed, such a finding would have been superfluous, in view of the court's conclusion that Thompson could not recover under the rulings in the New York Times and Garrison cases.

of this part of Albin's affidavit is not challenged), expressed the opinion that, because of Partin's connection with a certain State Trooper, there would be no help obtained from the state police office for an investigation of the irregularities and that probably no assistance would come from the sheriff's office, in view of the close relationship between Partin and the plaintiff, Thompson, If Albin was incorrect in this deduction, this, under the New York Times Co. vs. Sullivan rule, would not have warranted recovery even as to Albin (who, of course, is not a party defendant in this case) because the First Amendment to the Federal Constitution, which delimits by operation of the 14th Amendment the State's right to award damages for civil libels in matters involving public officials, applies only to those matters in which the injured official proves actual malice, i.e., that the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true.

The New York Times rule, as I understand it, authorizes civil libel recovery by public officials for defamatory remarks based on facts known to be false. It does not extend this right of redress to the free expression of opinion, no matter how erroneous, when such conclusion is drawn from true statements of fact. In other words, in view of the fact that the statement that money had passed from Partin to Thompson is true, the circumstance that Albin might have been mistaken, in implying that the money or check was given for Partin's or the Union's protection by the sheriff's office, would not afford a legal ground for holding the publication actionable. For this was fair comment, however erroneous, based on substantially true facts

and to hold otherwise, according to the New York Times case, would unconstitutionally trench upon the right of free speech. As was stated in Beauhornais vs. Illinois, 343 U.S. 250, and many times repeated, "*** public men are, as it were, public property" and, in the absence of *actual* malice, an action for libel may not be maintained. See also Garrison vs. Louisiana, 379 U. S. 64 (1964) and discussion in Time vs. Hill, 87 S. Ct. 534 (1967).

What I have heretofore said would apply only if Albin, the author of the affidavit, was the defendant in this case. But this suit is not against Albin but against St. Amant for publishing the alleged libelous affidavit. Insofar as St. Amant is concerned, the case is exactly parallel with the New York Times decision. Surely St. Amant, having secured an affidavit to the facts set forth therein, can hardly be said to have been actuated by malice toward Thompson. Indeed no proof is shown here that St. Amant knew that any fact stated in the affidavit was false or that any conclusion drawn from a true fact stated in the affidavit was false.

However the majority opinion, in holding St. Amant liable for damages, deduces that the alleged defamatory remarks concerning Thompson were uttered by St. Amant with "*** a reckless disregard as to whether the statements concerning Thompson were true or not". In reaching this conclusion the majority feels that St. Amant could not rely on the verity of the statements of fact contained in the affidavit; that it was incumbent on him to make an investigation of the truth of the statements before publication and that his failure to do so renders him liable as he nec-

essarily utters the defamatory statement with reckless disregard of its truth of falsity. This pronouncement effectually implies malice for it places ignorance of falsity on a parity with knowledge of falsity and in the same category with actual malice by holding that failure to make an independent investigation of truth constitutes a reckless disregard of truth or falsity. But this is exactly contrary to the view of the United States Supreme Court in the New York Times case.

Under the Times doctrine a qualified privilege extends to misstatements of facts in a publication relating to a public officer if other conditions of a qualified privilege (absence of actual malice) exists. There, it was held that a statement attacking the official conduct of a public officer does not forfeit the protection of the constitutional guaranty of free speech by the falsity of some of its factual statements and by the alleged defamation of the public official or by a combination of these two elements and that a defense must be allowed for erroneous statements honestly made. The court found that actual malice had not been shown on the part of the signers or sponsors of a newspaper advertisement describing the maltreatment in Alabama of negro students protesting segregation, where there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard.[4] With respect to the newspaper, it was held that a statement by its secretary that

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[4]This holding clearly supports the view I have above stated with regard to the author of the affidavit.

he thought the advertisement was substantially correct afforded no constitutional warrant for inferring actual malice from his ignoring the falsity of the advertisement, where his opinion was at least a reasonable one, and actual malice on the part of the newspaper was not shown by its failure to retract, upon plaintiff's demand, even though it later retracted upon the demand of the Governor of Alabama. It was found that there was no duty on the part of the newspaper to check the accuracy of the defamatory statement against the news stories in its own files which would have shown its falsity. This dereliction on the part of the newspaper was regarded as mere negligence and constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

In the case at bar, the majority opinion places a much greater burden on St. Amant — for the Court implies actual malice, contrary to the New York Times case, by concluding that, because he testified that he gave no thought to Thompson, this "*** was reckless error for him to take this position *** a faulty assumption *** in utter disregard of whether the remarks about Thompson were true or false."

In my view, St. Amant was justified in regarding the affidavit of Albin to be accurate. Further inquiry was not essential; the most that can be said is that, perhaps, he was negligent but negligence alone will not support a finding of actual malice.

The judgment or the Court of Appeal should be affirmed.